

42120

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of : PATENT  
Konstantinos POULAKIS : Appeal No. \_\_\_\_\_  
Serial No.: 10/019,397 : Art Unit: 1733  
Filed: December 28, 2001 : Examiner: B.J. Musser  
For: METHOD FOR PRODUCTION OF A :  
FLEXIBLE SHAPED STRIP :

**SUBMISSION OF CORRECTED BRIEF ON APPEAL**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appended hereto is a duplicate of the corrected Brief on Appeal filed on January 19,  
2007. It appears that the missing pages from the Exhibits are the result of a scanning error.

Respectfully submitted,

  
\_\_\_\_\_  
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Dated: June 7, 2007

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**SUBMISSION OF CORRECTED BRIEF ON APPEAL**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appended hereto is a corrected Brief on Appeal containing a statement of the status of all claims and a concise statement of each ground of rejection presented for review. This Corrected Brief on Appeal is submitted in response to the January 10, 2007 Notice of Non-Compliant Appeal Brief.

Respectfully submitted,

  
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Dated: Jan 19, 2007

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BRIEF ON APPEAL

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APPELLANT BRIEF  
ON APPEAL UNDER 37 C.F.R. § 41.37

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

For the Appeal to the Board of Patent Appeals and Interferences from the decision of April 20, 2006 finally rejecting claims 11-26, 28-38 and 43-45, Applicants submit the following Brief on Appeal in accordance with 37 C.F.R. § 41.37.

**1. Real Party in Interest**

The real party in interest in this application is Gottlieb Binder GmbH & Co. of Holzgerlingen, Germany by assignment from the inventor.

**2. Related Appeals and Interferences**

There are no other related appeals or interferences known to Appellant, Appellant's legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

**3. Status of Claims**

Claims 11-26, 28-38, 43 and 48 are on appeal. Claims 1-10 and 27 are cancelled. Claims 11-26, 28-38 and 43-45 are rejected. Claims 39-42 are objected to as depending from an allowable base claim but indicated as being allowable over the art of record. Claim 44 depends from allowable claim 42, although claim 44 is included in the rejections. Accordingly, claims 39-42 and claim 44 are not on appeal.

**4. Status of Amendments**

An Amendment Under 37 C.F.R. § 1.116 was filed on July 18, 2006. The Advisory Action states that this Amendment will be entered for purposes of this appeal.

**5. Summary of Claimed Subject Matter**

The present invention, as in each independent claim, is directed to method of producing a flexible fastener strip 18 for securing a covering material 12 to a cushion 10 or the like as disclosed on page 1, lines 2-5, of the substitute specification and shown in Figure 1. The cushion 10 as disclosed on page 4, line 7, has a longitudinal passage or slot 20 for receiving the shaped fastener strip 18. As shown in Figure 1 and described on page 4, line 7-16, the slot 20 is formed in a recessed area 24 that receives the fabric covering 12. The shaped strip 18 for securing the

fabric covering to the cushion 10 can have a generally cylindrical shape as shown in Figure 1 with a top surface 32, referred to as an "undercut" on page 5, line 12, and has longitudinal ribs 30, referred to as "configurations" on page 4, line 33. A soft plastic material is applied to the surface of the strip 18 to form a thin slip preventing coating as disclosed on page 2, line 23.

Independent claim 11 is directed to a method for producing a shaped strip 18 for securing a covering 12 to a cushion 10. The cushion 10 is made of a foam material as described on page 3, line 30, and is provided with a longitudinal passage 20 for engaging the strip 18. The method comprises forming the shaped strip 18 from a plastic material and providing a slip preventer at least partially on the exterior surface of the shaped strip. The slip preventer material is a soft plastic material that is softer than the cushion as disclosed on page 2, lines 5-8, and page 5, line 11. The slip preventer is formed to increase tear resistance of the strip from the cushion as disclosed on page 4, lines 32-33.

Independent claim 30 is directed to a method of producing a flexible shaped strip 18 for securing a covering 12 to a cushion 10 where the cushion has a longitudinal passage 20 and 24. The method forms the shaped strip from a plastic material having a top surface 32 as described on page 5, line 12, with a slot for receiving a fastener 16 as described on page 4, line 4. The shaped strip has longitudinal interlocking members 30 defining recessed areas between the interlocking members 30 shown in Figure 1 and disclosed on page 4, line 33. A slip preventer is applied on the top surface as shown in Figure 1 and described on page 5, line 11, where the slip preventer is softer than the shaped strip to increase tear resistance and described on page 5, line 12.

Claim 34 is directed to a method of producing a shaped strip 18 and securing a covering 12 to a foam cushion 10 having a longitudinal passage 20 and 24. The method forms the shaped

strip from a first plastic material having a top surface 32 with a longitudinal slot receiving a fastener 16 as disclosed on page 4, line 4, and lines 7-16. The shaped strip has longitudinal interlocking members 30 as disclosed on page 4, line 33. A second plastic material is applied as a coating on the surface of the shaped strip to form a slip preventer where the second plastic material is softer than the first material to decrease slippage between the shaped strip and the foamed cushion. These features are disclosed on page 5, line 11. The shaped strip with the slip preventer is inserted into the longitudinal passage of the foamed cushion so the slip preventer engages the cushion material as described on page 4, lines 7-16.

#### **6. Grounds for Rejection to be Reviewed on Appeal**

The following are the grounds for rejection for review:

- 1) Claims 11, 15, 17, and 28 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 3,876,495 to Esler.
- 2) Claims 11, 12, 15, 17, 22, 24, 28 and 30-32 stand rejected under 35 U.S.C. § 103(a) over South African 98050078 to Schulte in view of U.S. Patent No. 3,876,495 to Esler and U.S. Patent No. 6,478,382 to Maruyama.
- 3) Claims 12-14, 32 and 33 stand rejected under 35 U.S.C. § 103(a) over South African 98050078 to Schulte in view of U.S. Patent No. 3,876,495 to Esler, U.S. Patent No. 6,478,382 to Maruyama, and further in view of U.S. Patent No. 4,057,956 to Tolle.
- 4) Claims 18, 19, 25 and 26 stand rejected under 35 U.S.C. § 103(a) over South African 98050078 to Schulte in view of U.S. Patent No. 3,876,495 to Esler, U.S. Patent No. 6,478,382 to Maruyama, and further in view of U.S. Patent No. 5,095,915 to Engelson.

5) Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) over South African 98050078 to Schulte in view of U.S. Patent No. 3,876,495 to Esler, U.S. Patent No. 6,478,382 to Maruyama and further in view of U.S. Patent No. 4,874,670 to Boon et al.

6) Claims 29, 34-38 and 43-45 stand rejected under 35 U.S.C. § 103(a) over South African 98050078 to Schulte in view of U.S. Patent No. 3,876,495 to Esler, and the alleged admitted prior art.

## 7. Argument

### A. Claims 11, 15, 17 and 28 are Not Obvious Over Esler

#### (1) Claim 11

Claim 11 and claims 15, 17 and 28 depending therefrom are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,876,495 to Esler.

Independent claim 11 is directed to a method of producing a shaped flexible strip for securing a cushion covering to a cushion component where the cushion has a longitudinal passage for engaging the shaped strip. The flexible shaped strip is produced by forming the shaped strip from a plastic material for engaging the longitudinal passage in the cushion and providing slip preventer material at least partially on the exterior surface of the shaped strip where the plastic material is softer than the plastic material of the shaped strip. Esler does not disclose or suggest a shaped strip or a plastic coating for securing a covering to a cushion where the slip preventer increases tear resistance to prevent inadvertent removal of the cover from the cushion as claimed.

Esler relates to a welting cord for use in upholstery to form a bead around the edge of the upholstery. The welting cord is stitched into the fabric for a decorative purpose and not for

securing a fabric to a cushion. Esler does not disclose or suggest a method of producing a shaped strip for securing a covering to a cushion component as claimed. Esler further fails to disclose a method of forming a shaped strip for engaging a longitudinal passage and providing a slip preventing material on the exterior surface of the shaped strip. As discussed above, the claimed shape strip has a shape for cooperating with a slot or passage in a foam cushion to secure a fabric to the cushion. Thus, the shaped strip as claimed has a structure that is able to secure the fabric to the cushion and is able to mate with the cushion as disclosed in the specification. The claim terms must be construed in the context of the disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005).

The welting cord of Esler is not a flexible shaped strip that functions as or is capable of functioning as a fastener for securing a covering to a cushion component as claimed. The core 42 of Esler is a bundle of fibers and is not a shaped strip within the meaning of the present invention. The bundle of fibers 42 of Esler is not a shaped strip capable of securing a covering to a cushion component as claimed. The foam body 46 of Esler is not a slip preventing material formed on a shaped strip for securing a cover to a cushion. Accordingly, Esler does not disclose or suggest the claimed method of forming a flexible shaped strip having a slip preventer on the outer surface as recited in claim 11.

As shown in Figure 1 of Esler, the welting cord is wrapped by a fabric to provide a decorative feature to the finished article. There is no structure disclosed by Esler that would enable the welting cord to connect a fabric or cover to a foam cushion. The internal member 42 shown in Figure 1 of Esler is a reinforcing member formed from a plurality of flexible polyester fibers. See, column 6, lines 37-41. Thus, the reinforcing member of Esler is not a shaped strip

capable of attaching a cover to a foam cushion component. The foamed body 46 provides the volume so that the structure can function as a welting cord but is not a slip preventer as claimed.

Furthermore, Esler does not disclose providing a slip preventing coating on the exterior of a shaped strip where the slip preventer coating is a plastic softer than the plastic material of the shaped strip as in claim 11. There is no suggestion in Esler that the foam material is softer than the fibers forming the core of the welting cord. The non-slipping exterior surface of the welting cord of Esler is the result of the foam structure and not the foam material being softer than the core material. Esler discloses the foam being made from low density polyethylene. The polyethylene foam is not inherently softer than the core material as asserted in the Action. The Action does not establish that the foam material of Esler is a softer material than the fibers forming the core.

The disclosure of a plurality of fibers of Esler provides no motivation or incentive to one of ordinary skill in the art to produce a fastener strip having a shape or profile to attach a cover to a cushion material. Esler further fails to provide the necessary motivation or incentive to apply a soft anti-slip material to the outer surface of a shaped strip. Accordingly, independent claim 11 is not obvious over Esler.

## (2) Claim 15

Esler does not disclose or suggest the method of forming a slip preventer on a shaped strip by extrusion as in claim 15 so that claim 15 is not obvious.

(3) Claim 17

Esler does not disclose or suggest the method of forming a slip preventer on a shaped strip by hot coating as in claim 17 so that claim 17 is not obvious.

(4) Claim 28

Esler does not disclose or suggest the method of forming a slip preventer on a shaped strip by coating as in claim 28 so that claim 28 is not obvious.

**B. Claims 11, 12, 15, 17, 22, 24, 28 and 30-32 Are Not Obvious Over Schulte in view of Esler and Maruyama**

These claims are rejected under 35 U.S.C. § 103(a) as being obvious over South African Patent 9805078 to Schulte (hereinafter Schulte) in view of U.S. Patent No. to Esler and U.S. Patent No. 6, 478, 382 to Maruyama.

**(1) The Declaration is Sufficient to Remove the Schulte Patent as a Reference to Overcome the Rejection**

The present invention has an effective filing date of October 30, 1999 based on Applicant's German priority application. Schulte has a publication date of March 31, 1999, and thus, is only available as a reference under 35 U.S.C. § 102(a). On January 4, 2006, Applicant submitted a Declaration under 37 C.F.R. § 1.131, attached as Exhibit A, to demonstrate a conception and reduction to practice of the invention before the date of the Schulte patent. The Declaration and the exhibits attached thereto show that the profiled strip was coated with an slip resistance material prior to the publication date of the Schulte patent.

In the April 20, 2006 Office Action, the Examiner states that the Declaration is not sufficient to establish a date of invention prior to the effective date of the Schulte reference. Specifically, the Examiner states that the Declaration does not show the whole invention as claimed since the evidence does not show that the slip preventer is a "softer material" than the strip. Applicant submits that the Declaration establishes that a profiled strip was produced having an anti-slip coating where the anti-slip coating is a rubber glue thinned with methylethylketone or acetone. One skilled in the art would recognize that the rubber glue is a softer material than the profiled strip. Thus, the rubber glue is inherently softer than the profiled strip to establish a date of invention as claimed. The evidence submitted with the Declaration is not required to expressly recite that the coating is "softer" than the material of the profiled strip where the Declaration establishes possession of the strip fastener within the scope of the claims.

*In re Tanczyn*, 347 F.2d 830, 146 USPQ 298 (CCPA 1965).

The Declaration is required to show possession of the invention and as much as the reference shows when the rejection is based on obviousness. *In re Stryher*, 435 F.2d 1340, 168 USPQ 372 (CCPA 1971). MPEP § 715.02. A rejection based on obviousness over a reference where the art of record does not disclose the claimed modification, a Declaration under 37 C.F.R. § 1.131 can be sufficient when the Declaration is broader than the claims and the differences are small. *In re Spiller*, 500 F.2d 1170, 182 USPQ 614 (CCPA 1974). As noted above, the evidence in the Declaration shows a coating of a glue on a profiled strip which is inherently a softer material than the profiled strip. The Declaration and the evidence attached thereto clearly show the shaped profiled strip as well as the claimed anti-slip material being formed of a material softer than the material of the profiled strip. Schulte only discloses a profiled strip without a slip preventer so that the Declaration is only required to show the shaped profiled strip. The

Declaration shows more than what is disclosed by Schulte and is sufficient to antedate the Schulte patent.

The Action mischaracterizes the evidence submitted with the Declaration. Specifically, the Declaration does not indicate that the softness of the materials is "not important" as suggested in the rejection. While page 4 of Exhibit 3 may state that the profile hardness was not of interest for purposes of the test, it does not state that the hardness of the profiled strip and coating are not important. The experiment of Exhibit C was made to test the coating of the anti-slip material. Thus, this statement only suggests that the hardness of the profile shaped strip was not evaluated for purposes of that experiment. Even if the assertion was correct, the evidence establishes an anti-slip coating softer than the shaped strip as claimed.

Accordingly, the Applicant respectfully requests that the rejections based on the Schulte patent be reversed.

**(2) Claim 11 is Not Obvious over Schulte in View of Esler and Maruyama**

Even if Schulte is treated as prior art, the combination of Schulte in view of Esler and Maruyama do not disclose or suggest the claimed invention, since the combination of the cited patents do not suggest a method of producing a shaped strip and coating the shaped strip with a slip preventer material that is softer in comparison to the plastic material of the shaped strip. Schulte is cited for disclosing a strip for securing a cover to a seat cushion, but clearly does not disclose an anti-slip or slip preventer coating as in independent claim 11. Esler is cited for disclosing a foam body over a fiber core, while Maruyama is cited for disclosing a rubber layer on an electric wire. The rejection contends that it would have been obvious to modify Schulte to

form the foam body of Esler or the rubber wire coating of Maruyama onto the shaped strip of Schulte.

The Schulte patent discloses that the ribs are sufficient to fasten the strip to a foam body, but provides no motivation or incentive to apply an anti-slip coating. Nothing in Schulte suggests that a coating of any kind can or should be applied to the shaped, profiled strip. Schulte does not provide any suggestion that a coating or other slip preventing material is needed to function as intended. Thus, one skilled in the art would not be motivated to modify the strip of Schulte.

The foam welting cord of Esler is not relevant to the fastener of Schulte or the claimed invention. The foam layer on the core of Esler is formed to provide sufficient volume or bulk to function as a welting cord. The foam coating of Esler is not applied as a coating to increase the anti-slip properties of the core of polyester fibers. Moreover, Esler has no relation to coupling a fabric to a foam cushion and does not suggest that a foam coating can or should be used to secure a fabric to cushion. It would not have been obvious to one of ordinary skill in the art to apply the foam of Esler onto the shaped strip of Schulte since the foam of Esler is for a purpose unrelated to Schulte and the claimed invention.. The welting cord of Esler is not used within a seat cushion and the foam coating does not prevent slippage between a foam cushion and a fastener having a profiled shaped strip to enable the cover to be secured to the cushion. In view of the difference between the purpose of the foam coating of Esler and the purpose of the strip of Schulte, Esler provides no motivation or incentive to apply a coating to the outer surface of a strip of Schulte.

Maruyama relates to a trim cover having an electric heater. Maruyama specifically discloses wires 15 shown in Figure 3 with hook-like ends 15b which are described as pulling

wires for securing the trim cover to the seat cushion. The pulling wires are not a shaped strip for engaging a slot in a seat cushion. The pulling wires pass through loops in the seat material and the wires are coupled directly to the frame of the seat. The rubber coating on the pulling wires is not an anti-slip material. As specifically disclosed in Maruyama, the coating prevents damage to the heating element. Maruyama provides no motivation or incentive to apply an anti-slip material to a shaped strip for attaching a cover to a cushion material since an anti-slip material would not enable the wires to pass through the loops as required by Maruyama.

Independent claim 11 is not obvious over the combination of the cited patents since Esler and Maruyama provide no motivation or incentive to apply an anti-slip material to the shaped strip of Schulte as in claim 11. When no reference discloses a feature of a claim relied on to distinguish the prior art, there can be no suggestion to modify the prior art to contain that feature. *In re Civitello*, 339 F.2d 243, 144 USPQ 10 (CCPA 1964). As stated in *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1551, 220 USPQ 303, 311 (Fed. Cir. 1983), there must be something in the teachings of the cited patents to suggest to one skilled in the art that the claimed invention would be obvious. Thus, the rejection is not adequately supported by a clear factual basis, as required. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (C.C.P.A. 1967).

The modification suggested in the rejection is not obvious unless the cited patents suggest the desirability of the modification. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

The Examiner, in this situation, has not pointed to any specific principle or motivation in the prior art that would lead one skilled in the art to arrive at the invention as claimed. “[P]articular findings must be made as to the reason the skilled artisan, with no knowledge of the

claimed invention, would have selected these components for combination in the manner claimed." *In re Werner Kotzab*, 217 F.3d at 1371, 55 USPQ 2d at 1318.

The Examiner is using his knowledge of the invention, in hindsight, to conclude improperly that one skilled in the art would have found it obvious to make the proposed modification. However, such "hindsight reconstruction" is impermissible in reaching a finding of obviousness. See, e.g., *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).

For the reasons discussed above, independent claim 11 is not obvious over Schulte either alone or in combination with Esler and Maruyama.

(1) Claim 12

Schulte, Esler and Maruyama do not disclose or suggest a shaped strip having a slip preventer coating for the reason discussed above in connection with claim 11. The cited patents either standing alone or in combination also fail to disclose or suggest a coating providing slip preventing properties on a shaped strip where the slip preventing material is a soft plastic material having a Shore A hardness of lower than 150 as in claim 12. The cited art does not disclose the hardness of the materials, and thus, provides no suggestion of the claimed hardness for providing slip preventing properties to a shaped strip for securing a fabric to a cushion. Accordingly claim 12 is not obvious over the cited patents.

(2) Claim 15

Schulte, Esler and Maruyama either alone or in combination fail to disclose or suggest applying a slip preventing material on a shaped strip by extrusion as in claim 15. Accordingly, claim 15 is not obvious over the combination of the cited patents.

(3) Claim 17

Schulte, Esler and Maruyama either alone or in combination provide no suggestion of applying a slip preventing material on a shaped strip by a hot coating method as in claim 17. Thus, claim 17 is allowable as depending from claim 11 and for reciting an additional step that is not disclosed or suggested in the art of record.

(4) Claim 22

Claim 22 is patentably distinguishable by reciting the slip preventing material being a rubber. The art of record does disclose or suggest a rubber material to provide a slip preventing coating on a shaped strip. Thus, claim 22 is not obvious over the art of record.

(5) Claim 24

Claim 24 is patentably distinguishable by reciting the shaped strip having a profile selected from round, T-shape, fixing wedge or fixing anchor. The cited art does not disclose the claimed profiles having a slip preventing material applied to the outer surface as claimed. Thus, claim 24 is not obvious.

(6) Claim 28

The cited art does not disclose forming a slip preventing on the surface of a shaped strip by coating as in claim 28 in combination with the features of claim 11. Thus, claim 28 is not obvious over the combination of the cited patents.

(7) Independent Claim 30

Independent claim 30 is directed to a method of producing a flexible shaped strip for securing a fabric to a cushion where the shaped strip has a slot and a strip coupled to the slot. The shaped strip has longitudinal interlocking members defining recesses and a slip preventing material on a top surface of the strip that is softer than the strip material. Schulte is cited for disclosing a shaped strip for securing a fabric to a cushion. For the reasons advanced above, Schulte is not a reference so the rejection should be reversed.

Even if Schulte is treated as prior art, the combination of the cited patents do not render claim 30 obvious. Schulte discloses only a shaped strip, but does not suggest a slip preventing material on the outer surface of the strip. As previously discussed, Esler relates only to a welting material that has a foam outer layer to provide the sufficient bulk or volume to function as welting.

Esler provides no suggestion of a coating or layer to provide a slip preventing layer on the outer surface of a shaped strip to secure a cushion for the reason discussed above in connection with independent claim 11. Furthermore, none of the cited patents suggest providing a slip preventer material on the top surface of the strip or the slip preventer material being softer than the plastic material of the shaped strip as in claim 30. As disclosed in the specification, the slip preventing material on the top surface enables the shaped strip to effectively couple the

shaped strip to the cushion. One of ordinary skill in the art would not be motivated to apply a foam coating of Esler on a strip of Schulte unless there were some suggestion to do so. Since Esler relates to a device that is unrelated to the device of Schulte, it would not be obvious to make the modification proposed in the rejection.

Maruyama is directed to an electric heating wire for seats and to a wire fastener having hook-like ends to couple to the seat. The fastener of Maruyama is passed through loops and is hooked onto the seat. There is no suggestion of a fastener that attaches a cover to a cushion by being inserted into a longitudinal passage or slot in a foam cushion for coupling with the cushion as in the present invention. Furthermore, Maruyama is concerned with a plastic coating to protect the wires. The coating is not for preventing slippage and is not for coupling the wire to a cushion. The protective coating of Maruyama must be able to slide through the loops, and thus, can not be slip resistant since such a slip resistance would hinder assembly of the seat of Maruyama. Therefore, Maruyama provides no suggestion of applying a slip preventing material on the outer surface of a shaped strip to secure a fabric to a cushion. Accordingly claim 30 is not obvious over the combination of Schulte, Esler and Maruyama.

(8) Claim 31

Claim 31 is distinguishable by reciting the soft plastic material being applied to the recesses between the interlocking members of the strip. Thus, claim 31 is not obvious over the art of record.

†

(9) Claim 32

Claim 32 is distinguishable from the cited patents for reciting the soft plastic material having a Shore A hardness of lower than 150. This feature is not suggested in the cited patents either alone or in combination with the features of claim 30. Thus, claim 32 is not obvious over the cited patents.

C. Claims 12-14, 32 and 33 are Not Obvious

Claims 12-14, 32 and 33 are rejected as being obvious over Schulte, Esler and Maruyama, and further in of U.S. Patent No. 4,057,956 to Tolle. Schulte, Esler and Maruyama are cited as in claims 11 and 30. Tolle is cited for disclosing a coating on a steel cable.

(1) Claim 12

Claim 12 depends from claim 11 and recites the soft plastic material of the slip preventing material as having a Shore A hardness lower than 150. The rejection is based on the position that Tolle suggests a soft coating on steel cables, and thus, it would allegedly be obvious to provide a soft coating on the shaped plastic strip of Schulte.

Tolle is directed to a coating steel cable that is applied to prevent the wound cable from flaring when the cable is cut. This has no relation to the claimed invention of applying a slip preventer on a plastic strip. Tolle provides no motivation to apply a coating to the shaped strip of Schulte, the welting of Esler or the fastener of Maruyama since none of these devices are concerned with flaring of steel cables. Furthermore, Tolle does not disclose the claimed Shore A hardness of claim 12. Thus, it is not obvious to provide the shaped strip as claimed with a slip preventing material having a Shore A hardness lower than 150 as in claim 12.

(2) Claim 13

Claim 13 depends from claim 12 and is distinguishable by reciting that the soft plastic material has a Shore A hardness of 30 to 60. Such feature is not disclosed in the cited patents.

(3) Claim 14

Claim 14 depends from claim 12 and is distinguishable by reciting the soft plastic material having a Shore A hardness of 60. Such feature is not disclosed in the cited patents.

(4) Claim 32

Claim 32 depends from claim 30 and is distinguishable by reciting the soft plastic material having a Shore A hardness lower than 60. Such feature is not disclosed in the cited patents. Accordingly, claim 32 is not obvious.

(5) Claim 33

Claim 33 depends from claim 30 and is distinguishable for reciting that the soft plastic material has a Shore A hardness of 30-60. Such feature is not disclosed in the cited patents.

D. Claims 18, 19, 25 and 26 are Not Obvious

Claims 18, 19, 25 and 26 are rejected as being obvious over Schulte, Esler, Maruyama and further in view of U.S. Patent No. 5,095, 915 to Engelson. Engelson is cited for disclosing coatings being applied as thin strips or dip coating.

(1) Claim 18

The cited patents either alone or in combination do not disclose applying a slip preventing coating on the outer surface of a shaped strip for coupling a fabric cover to a foam cushion as recited in the independent claims. Claim 18 depends from claim 11 and is distinguishable from the cited patents by reciting the slip preventing material being applied by spraying. Since the cited patents do not disclose or suggest forming a slip preventing coating on the outer surface of the shaped strip, claim 18 is not obvious. Engelson provides no suggestion of spraying a coating of a slip preventer as in the claimed invention.

(2) Claim 19

The cited patents do not disclose applying a slip preventing material coating on a shaped strip by a dipping coating method as in claim 19. Thus, claim 19 is not obvious over the cited patents.

(3) Claim 25

Engelson discloses generally a spray coating method but does not suggest applying a coating as flakes as in claim 25. Thus, the combination of the cited patents do not disclose coating a shaped strip by applying flakes so that claim 25 is not obvious.

(4) Claim 26

Claim 26 depends from claim 11 and recites applying the slip preventing material as clots. Engelson, Schulte, Esler, and Maruyama provide no suggestion of applying a slip preventer coating as clots on a shaped strip. Thus, claim 26 is not obvious over the cited patents.

**E. Claims 20 and 21 are Not Obvious**

Claims 20 and 21 are rejected as being obvious over Schulte, Esler, Maruyama and further in view of U.S. Patent No. 4,874,670 to Boon et al. Boone et al. is cited for disclosing UV curable resins.

**(1) Claim 20**

Claim 20 depends from claim 11 and recites that the slip preventing material is hardened by UV light. Boon et al. is not related to applying a slip preventing material on a shaped strip. Accordingly, it is not obvious to harden a slip preventing coating of claim 20 in view of Schulte, Esler, Maruyama and Boon et al.

**(2) Claim 21**

The cited patents fail to disclose the step of hardening the slip preventing coating of claim 21 by applying an electron beam source. Thus, claim 21 is not obvious.

**F. Claims 29, 34-38 and 43-45 are Not Obvious**

In the final rejection, claims 11, 29, 34-38 and 43-45 are rejected as being obvious over Schulte, Esler and the alleged admitted prior art. In the Advisory Action, the rejection of claim 11 in this rejection was acknowledged as being an error, and thus, this rejection of claim 11 is considered withdrawn. Accordingly, claim 11 is not discussed in connection with this rejection.

**(1) Claim 29**

Claim 29 depends from claim 11 and recites the step of inserting the shaped strip into the foam cushion so that the shaped strip directly engages the foam cushion. Schulte and Esler are

cited as in the previous rejections. The alleged admitted prior art is cited as disclosing that it is known to use anti-slip "components".

For the reasons discussed above, Schulte is not available as prior art in this application. Furthermore, Schulte does not disclose or suggest a shaped strip having a slip preventer on an exterior portion of the shaped strip. Esler relates to a foam body formed on a bundle of fibers to form a welting or webbing cord. The foam body of Esler is not an anti-slip coating material and is not applied to the fibers of the cord to prevent the cord from slipping. The alleged admitted prior art also fails to disclose or suggest an anti-slip or slip preventer on the periphery of a shaped strip as claimed. The passage relied on in the Action refers to the strip of anti-slip components which leads to "relatively weak shaped strips" without an increase in the tear resistance of the shaped strip from the cushion material. Thus, this passage would discourage one of ordinary skill in the art from using a strip of anti-slip components since this passage suggests that no benefit is attained and results in weaker shaped strips. There is no disclosure or suggestion in the passage cited in the rejection that the shaped strip has a slip preventing material coating. Thus, the cited passage does not provide the deficiencies of Schulte and Esler.

Accordingly, it would not have been obvious to insert a shaped strip into a passage in a cushion where the strip has a slip preventing material on the outer surface thereof as in claim 29 so that claim 29 is not obvious over the combination of Schulte, Esler and the alleged admitted prior art. The foam body of Esler is not an anti-slip coating material and is not applied to the fibers of the cord to prevent the cord from slipping. The alleged admitted prior art also fails to disclose or suggest an anti-slip or slip preventer on the periphery of a shaped strip as claimed.

(2) Independent Claim 34

Independent claim 34 recites the method of producing a flexible shaped strip and securing the shaped strip to a cushion where the strip has a fastener in the top surface that is received in a slot, the shaped strip having longitudinal interlocking members, applying a second plastic material on the strip that is softer than the strip to decrease the slippage and inserting the strip into a longitudinal passage of a cushion. Schulte, Esler and the alleged admitted prior art do not disclose or suggest these features.

For the reasons advanced above, Schulte does not disclose a shaped strip having longitudinal interlocking members and a slip preventing material on the outer surface thereof. Esler relates to a foam body formed on a bundle of fibers to form a webbing cord. The foam body of Esler is not an anti-slip coating material and is not applied to the fibers of the cord to prevent the cord from slipping. The alleged admitted prior art also fails to disclose or suggest an anti-slip or slip preventer on the periphery of a shaped strip as claimed. Accordingly the combination of Schulte, Esler and the alleged admitted prior art does not render claim 34 obvious.

(3) Claim 35

Claim 35 depends from claim 34 and is distinguishable for reciting the step of applying the second plastic material as a slip preventing coating by extrusion coating, hot coating, spray coating or dipping. Schulte, Esler and the alleged admitted prior art do not disclose or suggest these coating methods either alone or in combination with the features of claim 34.

**(4) Claim 36**

Claim 36 depends from claim 34 and recites the second plastic material being applied to the top surface of the shaped strip to provide the slip preventing feature. Schulte, Esler and the alleged admitted prior art do not suggest a slip preventing coating or material on an outer surface of the strip, and thus, do not suggest applying a slip preventing material on a top surface as claimed. Thus, claim 36 is not obvious.

{}

**(5) Claim 37**

Claim 37 is distinguishable for reciting the step of applying the slip preventing material in the spaces between the longitudinal interlocking members. Schulte, Esler and the alleged admitted prior art do not disclose a slip preventing coating, and thus, provide no suggestion of applying the material between the interlocking members. Accordingly, claim 37 is not obvious.

**(6) Claim 38**

Claim 38 depends from claim 11 and is distinguishable for reciting the slip preventer being a thin layer with a thickness less than the dimension of the shaped strip. Since the cited art does not disclose a slip preventer on the surface of the shaped strip , claim 38 is not obvious.

**(7) Claim 43**

Claim 43 depends from claim 34 and is distinguishable for reciting the slip preventer applied as a thin coating. The cited art does not disclose coating of a slip preventer so that claim 43 is not obvious.

(8) Claim 45

Claim 45 depends from claim 11 and is distinguishable for reciting the fastener being coupled to the shaped strip and extending along the length of the strip. The art of record does not disclose this feature in combination with the features of claim 11 so that claim 45 is not obvious.

**8. Conclusion**

For the reasons discussed above, the claims are not obvious over the art of record since the Schulte patent is not available as a rejection. Accordingly each of the rejections that rely on the Schulte patent should be reversed. Even if Schulte is available as a reference, the patents of record fail to disclose or suggest forming a shaped strip having a slip preventing material on the outer surface for resisting tearing or removal when the strip is inserted into a cushion to couple a fabric to the cushion.

Applicant requests that the rejections under 35 U.S.C. § 103 be reversed.

Respectfully submitted,



\_\_\_\_\_  
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Dated: Jem, 19, 2007

**APPENDIX A - Claims on Appeal**

11. A method for producing a flexible shaped strip for securing a cushion covering to a cushion component formed of foam material and provided with a longitudinal passage for engaging the shaped strip, comprising the steps of:

forming the shaped strip from plastic material for engaging the longitudinal passage in the cushion component and securing the covering to the cushion component; and

providing a slip-preventer at least partially on an exterior periphery of the shaped strip, the slip-preventer being a plastic material softer than the plastic material of the shaped strip;

whereby, the slip-preventer increases tear resistance of the shaped strip to resist inadvertent removal of the shaped strip from the longitudinal passage in the cushion component.

12. A method according to claim 11 wherein

the soft plastic material of the slip-preventer has a Shore A hardness lower than 150.

13. A method according to claim 12 wherein

the Shore A hardness is between 30 and 60.

14. A method according to claim 12 wherein

the Shore A hardness is 60.

15. A method according to claim 11 wherein

the slip-preventer is applied to the shaped strip by extrusion.

16. A method according to claim 11 further comprising coextruding the slip-preventer onto the shaped strip.

17. A method according to claim 11 wherein the slip-preventer is applied to the shaped strip by a hot coating method.

18. A method according to claim 11 wherein the slip-preventer is applied to the shaped strip by a spray method.

19. A method according to claim 11 wherein the slip-preventer is applied to the shaped strip by a dipping coating method.

20. A method according to claim 11 wherein the slip-preventer is a coating applied on the shaped strip; and the coating is hardened by ultraviolet light.

21. A method according to claim 11 wherein the slip-preventer is a coating applied on the shaped strip; and the coating is hardened by an electron-radiation source.

22. A method according to claim 11 wherein the soft plastic material is rubber.

23. A method according to claim 11 wherein  
the shaped strip is formed with recessed areas between the shaped strip and the cushion  
component, the slip-preventer being applied only in the recessed areas.
24. A method according to claim 11 wherein  
the shaped strip has a profile selected from the group consisting of round, T-shaped,  
fixing wedge and fixing anchor.
25. A method according to claim 11 wherein  
the slip-preventer is applied to the shaped strip in flakes.
26. A method according to claim 11 wherein  
the slip-preventer is applied to the shaped strip in clots.
28. A method according to claim 11 wherein  
the slip-preventer is applied to the shaped strip by coating.
29. A method according to claim 11 wherein  
the shaped strip with the slip-preventer thereon is inserted into a foam cushion for  
securing a cover to the cushion such that the slip-preventer directly engages the foam cushion.

30. A method for producing a flexible shaped strip for securing a cushion covering to a cushion component formed of foam material and being provided with a longitudinal passage for engaging the shaped strip, comprising the steps of:

forming the shaped strip from plastic material, the strip having a top surface with a longitudinal slot, a fastener received in the slot and coupled to the shaped strip, and longitudinal interlocking members on side surfaces of the strip defining recessed areas between the interlocking members; and

providing a slip-preventer on said top surface of the strip, the slip-preventer being a plastic material softer than the plastic material of the shaped strip to reduce slippage between the strip and the foam material and to increase tear resistance of the shaped strip to resist inadvertent removal of the shaped strip from the longitudinal passage in the cushion component.

31. A method according to claim 30 further comprising

applying the soft plastic material to the recesses between the interlocking members.

32. A method according to claim 30 wherein

the soft plastic material of the slip-preventer has a Shore A hardness lower than 150.

33. A method according to claim 30 wherein

the Shore A hardness is between 30 and 60.

34. A method for producing a flexible shaped strip and securing a cushion covering to a foamed cushion material having a longitudinal passage for engaging the strip, comprising the steps of:

forming the shaped strip from a first plastic material, the strip having a top surface with a longitudinal slot, a fastener received in the slot and coupled to the shaped strip and to the cushion covering material, the shaped strip having a plurality of longitudinal interlocking members on side surfaces;

applying a second plastic material on a surface of the shaped strip to provide a slip-preventing material on the shaped strip, the second plastic material being softer than the first plastic material to decrease slippage between the shaped strip and the foamed cushion material; and

inserting the shaped strip into the longitudinal passage of the foamed cushion material such that the second plastic material directly engages the foamed cushion material.

35. A method according to claim 34, comprising

applying a coating of the second plastic material onto the shaped strip by extrusion coating, hot coating, spray coating, or dipping.

36. A method according to claim 34, comprising

applying the second plastic material to the top surface of the shaped strip.

37. A method according to claim 34, comprising

applying the second plastic material to an area between the longitudinal interlocking members.

38. A method according to claim 11, wherein

the slip-preventer is coated onto the shaped strip as a thin layer having a thickness less than a dimension of the shaped strip, and wherein the shaped strip has a size to be retained in the longitudinal passage of the cushion component.

43. A method according to claim 34, wherein

the second plastic material is applied as a thin coating on the shaped strip; and the coating is thin relative to the dimension of the shaped strip.

45. A method according to claim 11, further comprising

a fastener coupled to the shaped strip and extending longitudinally along a length of the shaped strip.

**EVIDENCE APPENDIX**

Declaration Under 37 C.F.R. § 1.131 by Konstantinos Poulakis

42120

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :  
Konstantinos Poulakis : PATENT  
Serial No.: 10/019,397 : Art Unit: 1733  
Filed: December 28, 2001 : Examiner: B. J. Musser  
For: METHOD FOR PRODUCTION OF A :  
FLEXIBLE SHAPED STRIP :

DECLARATION UNDER 37 C.F.R. § 1.131

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

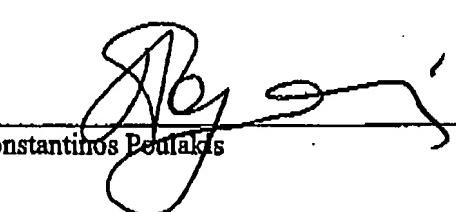
Sir:

Konstantinos Poulakis, the sole inventor of the subject matter described and claimed in the above-identified application, declares that prior to March 31, 1999, the invention described and claimed in this application was completed in Germany, a WTO country, by successfully performing and successfully testing the claimed method; and that the attached documents appended hereto as Exhibits A - C describe the method performed and tested prior to March 31, 1999, which method conforms to the method described and claimed in the subject application.

Exhibit A discloses that a profiled strip was coated with an anti-slip material and that the anti-slip material can be top coated with a brush or dipping. The anti-slip material is a rubber glue thinned with methylethylketone (MEK).

He declares further that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 15. Sept. 2005

  
Konstantinos Peuktakis

~~ITAC/ER~~

(1) Profil - Miroplast

(A) hinten Fe-PV - vorne Hydrophob.

(B) hinten Fe-PV - vorne Acrylast Folie.

be' geometrie be' uns problem in der for.

(2) (A) 2-3 m 410 m Breiten Miroplast Fe-PV

(B) 2-3 m ~~Fe~~ Fe-Acrylast - Folie.

(C) 2-3 m Fe-HM-PES - Folie.

nach Italien schicken.

(3) Profil - mit angedeuteter Bezeichnung ist viel besser  
Form von Fabrik produzieren.

Form von bisher erhaltenen &amp; Thomas

3-Kissen - original herstellen 60°C

Kiva - Verneßen &amp; Thomas

Form - ausnahmsweise kaufen &amp; Thomas

Form - modifizieren &amp; Raab - HfH

Stütze für neue Form &amp; Thomas

Profil, JFF

mit der Pappe in Leder, Profil  
"richtig benannt" angeordnet.

a) mit Backen aus - kleben (S214715)  
Hart Kleber mit Met

b) Kleber Et Hart Kleber mit Acryl

Kleinerer Stoffe aufgerollt werden:

d) komplett - Belebung / Anhänger  
Kleber - band

(2) Nur "oben" verarbeiten mit Pinsel

Kleber Et gibt eine ausreichend gute  
~~Haltung~~ Haltung zum Profil und hat in  
gewünschte Weise. Kein Mann kann vorgeführt  
in vorbereitet. Allerdings müssen es  
in der Seite nur "oben" befestigen.

German translation

## Profile - Seat

the profile was „antislip“ coated with Kl. Nägele in the lab.

- a) with back-to-back glue (SU 4715), thinned with MEK
- b) Glue 21, thinned with Aceton

following should be tested

- 1) complete coating / dip in glue
- 2) only „top“ coated with brush

Glue 21 results a gut adhesion to the profile and has the wanted effect.

It was shown to Mr. Mense. He was very enthusiastic about that.

However we should coat only on the top in the line

(signature)

German translation

## ITALY

- 1) trench Microplast
  - A) back Fe-PU – front hydrophobic
  - B) back FePU – front acrylic foil

the design to be tested in our facilities in the tool

- 2) A) 2 - 3 m 410mm wide Microplast Fe-PU
  - B) 2 - 3 m Fe-Acrylic foil
  - C) 2 - 3 m Fe-HM-PES-folto be send to Italy

- 3) profile with antislip-coating is better
  - tool to be modified by Fehrer
  - tool to be connected with water ← Thomas
  - produce 3 original pads 60°C
  - pads to be measured ← Tuma
  - separate tool ← Thomas
  - tools modification ← Raab – Hiha
  - rebuild tool ← Thomas
  - produce 3 pads ←

~~fa. TECNIMONT~~

Versuch mit  
25445 mit 36% -Abbildung  
Kleber 22 mit 22% Fe

hat sich gezeigt

- A) magnetkraft niedrig  
Sollte ~~reduziert~~ erhöht werden  
Abstand Magneten ca. 5 cm.
- B) Überhöhung weil Magnetkraft nicht auf der Folie
- C) Überhöhung des Vorschusses selbst.  
weil die Form wird bei 105°C  
tempuriert. der Kernelt ist flüssig.  
Silikon abweg

~~TOSCA 211~~

(2)

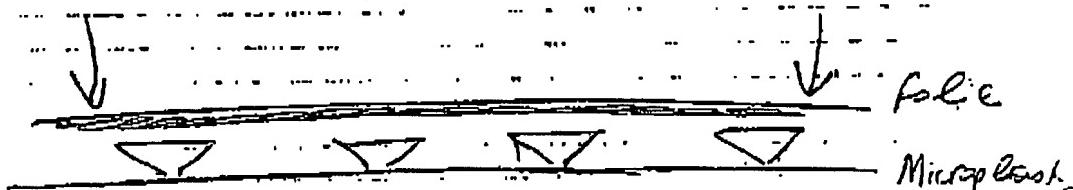
To Do:

50µ - Folie

Acrylatek

35% fr.

Schnitzen von der Folie her

~~nicht vom unten~~Temperatur in der Form  $\Rightarrow$  105°C

FOLIANA (9)

Bei Der Höhe des Profils wurde

Wenig Felting gegeben.

Bei Möglichst mit 2 - Fasern sollte  
angepasst werden.  $\rightarrow$  das Wallen ist die  
Rippe am weidesten.

TO DO

- ① ca. 5 m mit PP-Vlies mit kerben.
- ② danach ca. 50 m mit Vlies - Abwurfbar um es CTR- vorzustellen.
- ③ ca. 50 m mit 2 fasern.
- ④ ca. 50 m mit antimisch Felting auf die obere Seite also Profil



German translation

## page 1

## Toscana Gomma

trials with 25445 with 36 $\mu$  shield, glue 22 and 20% Fe

results:

- A) magnetic force low  
should be increased  
magnet distance about 5 cm
- B) foam intrusion over the foil, because of low magnetic force
- C) foam intrusion over the fastener, the tool has a temperature by 105°C, the hotmelt glue melts down

## page 2

## TO DO

50 $\mu$  foil  
acrylic adhesive  
35% Fe  
cutting from the side of the foil  
(design)  
not from the bottom  
temperature in the form 105 °C

## page 3

PROFILE

the same complaints as Mr. Mense. If a shape is builited, the profile is pulled off.  
Jan showed the rounded shape. More secure should be with notches every 20-25 mm on both sides.

A flag with PVC-foil should NOT be ok if the foil is not stable enough after sealing, more convenient should be a PVC-coated textile.

The PP-nonwoven seems to be ok.

The material with the notches should be shown by LEAR.

## page 4

The profile hardness was not of interesst.

The possibility to build up the product with two flags was discussed. They want to put a patent application.

## TO DO

- 1) about 5 m with PP-Nonwoven and notches
- 2) after that about 50 m with nonwoven-sealable to show it to LEAR
- 3) about 50 m with two flags
- 4) about 50 m with antislip coating on the top of the profile  
(design)

**RELATED PROCEEDINGS APPENDIX**

None.